

REMARKS

Claims 1, 2, 10 and 16 now stand rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Morgan ('295). The Examiner alleges that Morgan discloses a window assembly comprising a window frame (16, 15-both sides, and 14), an alleged jamb pocket portion (24 and 39-both sides), a retractable mesh screen (26) rolled onto an alleged spring-biased cassette (column 2, lines 10-14) integrally contained within the alleged jamb pocket (24 and 39-both sides), a handle (28) extending along the bottom portion of the screen (26) and guided along alleged jamb pocket portion grooves (39) thereby providing parallelism as the screen (26) is biased to a closed position. But in his attempt to force the terms used by Applicant onto the Morgan construction the Examiner has ignored the fact that Morgan in fact has "jamb" members 12 in his structure as seen in Figure 2. Since Morgan defines jamb 12 in his disclosure as a different element from the header space 24 clearly they are not equivalents, that is they are not interchangeable as the Examiner incorrectly suggests.

Referring now to United States Patent 2,235,295 hereinafter referred to as Morgan there is taught a window frame with a screen built into the header for a double sash type window as best seen in Figure 2. The term built-in is correct in fact because the screen is built-in to the window assembly. Applicant attaches herewith photographs of an attempt to reconstruct the window of Morgan. With respect to the attached photograph the view including the latch on the top of the bottom window sash is the inside view of the Morgan assembly. The other picture is the view from the outside of the Morgan assembly. This window assembly was built in order to evaluate the veracity of the Examiner's comments in relation to the Morgan structure in his action of September 14, 2005.

The comments of the Examiner on page 2 of his report in relation to anticipation of the current claims 1, 2, 10 and 16 by Morgan make basic assumptions that the jamb pocket portion defined by Applicant in his claims is an alleged equivalent to the header in the Morgan structure. One skilled in the art would appreciate that the screen is in fact built into the header section of Morgan not the jamb. Secondly there is no teaching within Morgan as to how the screen 25 once built in is maintained. At column 2, second paragraph he states that a roller 25 is mounted in chamber 24 which carries the screen element 26 which may be rolled and unrolled in a manner of a conventional window shade. The screen element of Morgan passes through a pair of horizontal channel pieces 27 which are supported between the facing member 16 and frame member 13 by unlabelled screw type fasteners. This can be best seen in relation to Figure 2 wherein that member 27 is actually pinned into place to items 16 and 13 and facing the outside portion of the window assembly. In order to remove the screen 25 of Morgan from the space 24 disassembly is

required. Space 24 clearly is not equivalent to the pocket defined by Applicant's claims because Applicant's pocket is defined as being extruded integrally with the jamb when the jamb of the window frame is formed. Clearly this structure cannot be considered equivalent to Morgan since Morgan is made from wooden boards which are essentially fastened together in a conventional manner. The screen of Morgan passes between the pair of horizontal channel pieces 27 which must be removed in order for reinforcing strip 28 and the screen cloth to be fully accumulated on Morgan's roller. In normal operation handle 28 will not pass through member 27. To do this many of the boards of Morgan must be removed from the Morgan assembly. Otherwise the screen cannot be repaired or cleaned if punctured, torn or dirty.

Again the teachings of Morgan are silent with respect to how his screen would be maintained in his assembly. Even if the Examiner's interpretation of the Morgan header being the alleged equivalent to a jamb was correct, which respectfully is not the case, in Applicant's opinion how would the Morgan device be utilized with a tilt and slide window assembly since the screen would drop out of place because of gravity, if installed vertically in a jamb.

If one skilled in the art would to attempt to access the screen 25 from the inside or outside of Morgan's window it would take a considerable amount of disassembly of Morgan's wooden window frame. It would be difficult to do in that many separate members must be disassembled in order to access the screen including items 21, 22, 23 and 27 potentially 13 as well. The question is once disassembled could Morgan be properly reconstructed in place. Therefore it is submitted that normally one would not attempt to repair the screen from the inside or for that matter from the outside. Morgan's assembly might become abandoned if maintenance is required. Morgan himself teaches inner and outside guideways 20 and 19 thereby defining the inside and outside faces of his window.

In fact, Morgan at page 2, first column, line 24 states,

"It will be noted that the screen is incorporated in the window frame as a permanent fixture. (emphasis added) Seasonal installations and removals are thus avoided."

Therefore in conclusion although generally speaking Morgan may be prior art to the current invention it does not anticipate nor render obvious Applicant's claims in view of the current amendments and arguments presented herein.

Applicant attaches herewith two photographs labeled inside and outside views of Morgan for the Examiner's assistance. The actual window assembly is being held at Applicant's premises in the event

that should it be necessary to interview the Examiner at some future date, should the Examiner not find the present submissions convincing, then that window assembly will be available for further discussion with the Examiner.

Also the alleged guides provided with the Morgan construction are definitely not telescopic guides as defined by claim 3. Claim 2 depends on claim 1 and therefore would be read in combination with all the limitations now found in amended claim 1 and 16. Full reconsideration therefore is respectfully requested.

In order for Morgan to anticipate Applicants claims it must include each and every limitation of the claim elements as referenced in the excerpted case law in Applicant's several prior responses. All excerpted case law citations above mentioned are incorporated by reference in their entirety into this response as if they were included in their entirety herein. It is also surmised that the Examiner may also allege the present claim set is obvious in view of Morgan. However there is no motivation to one skilled in the art to arrive at Applicant's claim construction from the teachings of Morgan since the teachings of Morgan lack the elements of Applicant's amended claim set now including the ability to maintain the assembly.

Full reconsideration is respectfully requested. Sixty-five years have past since the development of Morgan. One skilled in the art in reading Morgan would have understood that Morgan is deficient with respect to maintenance of the screen assembly, and deficient in a teaching of installing Morgan vertically in the jamb of a tilt and slide window assembly.

Applicant's invention relates to a screen assembly carried within a closure frame within an integral jamb pocket extruded with the jamb. Applicant's screen is readily accessible for maintenance purposes. These limitations are not found within Morgan. How then can Morgan anticipate or render obvious the present claim set.

In conclusion the following cases support the assertions of Applicant abovementioned.

ANTICIPATION

The following excerpts of U.S. case law represent Applicant's understanding of the test for novelty and obviousness.

In Hybritech Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986) ("It is axiomatic that for prior art to anticipate under § 102 it has to meet every element of the claimed invention, and that such a determination is one of fact.").

In re Donohue, 766 F.2d 531, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985) ("an anticipation rejection requires a showing that each limitation of a claim must be found in a single reference, practice, or device.").

In Atlas Powder Co. v. E.I. du Pont De Nemours & Co., 750 F.2d 1569, 1574, 224 U.S.P.Q. 209, 411 (Fed. Cir. 1984) ("exclusion of a claimed element from a prior art reference is enough to negate anticipation by that reference").

ENABLING

In re Sun, 31 USPQ 2d 1451, 1453 (Fed. Cir. 1993) (unpublished)

Under section 102(b), anticipation requires that the prior art reference disclose, either expressly or under the principles of inherency, every limitation of the claim. . . .

But to be prior art under section 102(b), a reference must be enabling. . . . That is, it must put the claimed invention in the hand of one skilled in the art. . . . The examiner bears the burden of presenting at least a prima facie case of anticipation.

In re Wilder, 166 USPQ 545, 548 (C.C.P.A. 1970)

Simply stated, a prior publication or patent description will be considered as anticipatory when its disclosure is at once specific and enabling with regard to the particular subject matter at issue. . . . However, such disclosure may yet be held not to legally anticipate the claimed subject matter if it is found not to be sufficiently enabling, in other words, if it does not place the subject matter of the claims within "the possession of the public."

OBVIOUSNESS

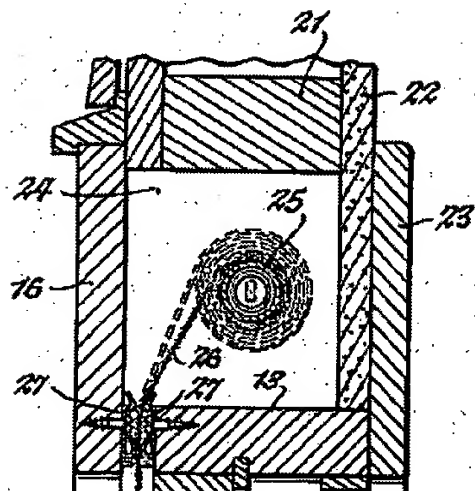
The traditional test enunciated in *Graham vs. John Deere Company* 383 U.S. 1, 148 U.S.P.Q. 459 1966, for Section 103 nonobviousness requires the fact finder to make several determinations. The test provides that the scope and content of the prior art be determined, the differences between the prior art and the claims at issue be ascertained, and the level of ordinary skill in the pertinent art be resolved. Thus, the patentability of the claims at hand must stem from the fact that the specific combination of the claimed elements was not disclosed in the prior art and the additional allegation that the specific combination of claimed elements was nonobvious to one of ordinary skill in the art.

Clearly, the prior art does not suggest or provide any reason or motivation to make such a modification as purported by the Examiner.

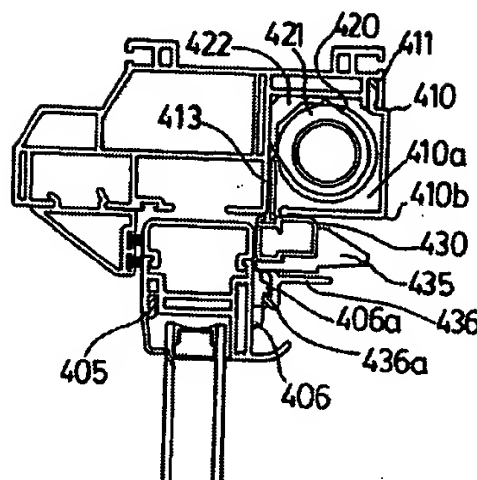
Full reconsideration is therefore requested.

In Summary:

Morgan Figure 2



Davies Figure 35A



- 1 (i) Morgan's header is constructed from several wooden members fastened together to enclosed the screen 25.
(ii) Davies jamb and jamb pocket are extruded as an integral unit which results in ease of installation in a closure assembly.
- 2 (i) Morgan's screen is installed horizontally in the header on a roll tube for a double pane window.
(ii) Davies screen is installed vertically in the jamb pocket for a tilt and slide window assembly or a patio door. The Morgan structure cannot be oriented vertically without significant modifications.
3. (i) Morgan can only be maintained with considerable difficulty if justified and at considerable expense.
(ii) Davies is designed to be easily maintained.

Applicant has therefore addressed all the issues raised by the Examiner in his report of September 14, 2005 and requests full consideration of the alleged rejections for the reasons set out above.

If the Examiner has any questions, he is requested to contact Neil H. Hughes at (905) 771-6414 at his convenience.

Respectfully submitted,

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Encls.